

Members:

Rep. Ed Mahern, Chairperson
Rep. Michael Dvorak
Rep. Ralph Foley
Sen. Sue Landske, Vice-Chairperson
Sen. Joseph Zakas
Sen. Rose Ann Antich



Lay Members:

Mr. James Martin
Ms. Cynthia A. Boll
Mr. Vincent J. Heiny
Mr. Robert Christopher
Ms. Janet S. Ellis
Mr. Terry Harris
Ms. Diane L. Bender
Mr. John S. Chappell
Ms. Kristin G. Fruehwald

PROBATE CODE STUDY COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

LSA Staff:

Ross Hooten, Attorney for the Commission
Susan Preble, Fiscal Analyst for the Commission

Authority: IC 2-5-16-3

MEETING MINUTES

Meeting Date: August 27, 1998
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Ed Mahern, Chairperson; Rep. Ralph Foley; Sen. Joseph Zakas; Mr. James W. Martin; Mr. Robert Christopher; Ms. Janet Ellis; Ms. Diane Bender; Ms. Kristin Fruehwald.

Members Absent: Rep. Michael Dvorak; Sen. Sue Landske; Sen. Rose Ann Antich; Ms. Cynthia Boll; Mr. Vincent Heiny; Mr. Terry Harris; Mr. John Chappell.

Rep. Mahern called the meeting to order and welcomed the members of the public in attendance. Rep. Mahern then selected October 1, 1998 as the next meeting date of the Commission.

Rep. Mahern explained that the Commission intended to discuss the preliminary drafts on the Commission's agenda but would not vote to adopt any of the drafts until the Commission's third meeting on October 1.

These minutes address each draft in turn as it was considered by the Commission.¹

¹ Each of the preliminary drafts referred to in these minutes is on file with the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington St.,

PD 3063

Preliminary Draft 3063 proposes to eliminate the requirement that notice of the final account in a supervised estate be published.

Rep. Mahern began the discussion by introducing the Hon. Charles J. Dieter, of the Marion County Superior Court, Probate Division. Judge Dieter related his desire to speed up the administration of decedents' estates. Judge Dieter noted that in Marion County the required notice by publication and hearing of the final accounting adds one month to the administration of a supervised estate. Judge Dieter also reported that while the published notice sets an objection deadline and the hearing date, he could not recall anyone responding to the notice. Since distributees of the decedent's estate receive actual notice of the final account and often waive a hearing, Judge Dieter noted that the distributees are not interested in the published notice.

Ms. Fruehwald then raised the issue of unlocated heirs. Judge Dieter replied that he had no quarrel with using notice by publication to allow the administration to proceed toward closing in that situation.

The Commission discussion then turned to concerns about creditors and the likelihood that a creditor could not receive notice. Sen. Zakas pointed out that in the 1997 session of the General Assembly the Senate Judiciary Committee debated similar legislation and focused on trying to notify everyone who might have an interest in an estate. The Judiciary Committee had characterized it as a fairness issue.

Rep. Foley then closed the discussion by suggesting changes to PD 3063 that would permit the use of notice by publication when unlocated heirs are involved.

PD 3067

Preliminary Draft 3067 proposes to change the deadline for providing notice to creditors from three months to two months and to reduce the period for filing a claim against an estate from five months to three months.

Judge Dieter again addressed the Commission with the hope of speeding up the probate administration process. Judge Dieter noted that there will be an increasing number of estates without a death tax liability. The changes in PD 3067 would enable these estates to move more quickly. Judge Dieter also suggested that large estates would benefit as well as because there is always a concern that a claim will be filed. Judge Dieter then reported the results of his unscientific tally of claims pending in the Marion County Probate Court. Most were filed in the first or second month of the filing period.

Rep. Foley asked Judge Dieter if he would support reducing the inheritance tax payment deadline as recommended by the Commission in the 1996 interim. Judge Dieter replied that the deadline should be moved to nine months following the date of

death. The Commission members then discussed the practical effect of moving the deadline upon the administration of a decedent's estate. Mr. Bill Reynolds reported that moving the deadline did not pose a problem to the Indiana Department of State Revenue.

Rep. Mahern then requested Counsel to revive PD 3101-1997 containing the changes suggested by Rep. Foley.

Two members of the public briefly addressed the Commission regarding the proposal to change the deadlines. Mr. Bill King, representing the Indiana Bankers Association, urged the Commission to proceed cautiously and look at the issue from all angles. Mr. Walter Kirkwood, representing Bank One, stated that the bank prefers no changes.

PD 3062

Preliminary Draft 3062 proposes to increase the surviving spouse allowance to \$25,000.

The Commission discussed the 1997 attempts to raise the allowance at the time the small estate amount was raised to \$25,000. Rep. Mahern asked about the fiscal impact of the proposed change. Susan Preble, fiscal analyst for the Commission, replied that the impact would be minimal.

PD 3072

Preliminary Draft 3072 adopts the Uniform Prudent Investor Act.

Ms. Fruehwald suggested a couple of changes but noted that everyone agreed that the draft was a step forward.

Mr. Steve Bone, representing Renaissance, Inc., addressed the Commission in support of the Uniform Prudent Investor Act. Mr. Bone noted that at least 25 states have adopted the act. He stated that the advantages offered by act include: allowing trustees to utilize improved investment strategies; important protections for trustees; benefits to the remaindermen in charitable remainder trusts; and fair standards for all beneficiaries.

PD 3069

Preliminary Draft 3069 removes limitations on the purchase of life insurance by fiduciaries.

Ms. Fruehwald noted that the proposed changes were suggested by the Probate Review Committee of the Indiana State Bar Association. She suggested that most practitioners probably are not aware of the limitations on the purchase of life insurance. Mr. Bone agreed, stating that the current law is a trap for the unwary.

PD 3141

Preliminary Draft 3141 clarifies the status of charitable trusts.

Ms. Fruehwald initiated the discussion by thanking Ms. Elaine Wilson, Barnes and Thornburg, and Mr. Steve Bone for their assistance in the preparation of PD 3141.

Mr. Bone then described the definitional changes designed to clarify the status of charitable trusts. The draft distinguishes a charitable trust from a trust for a public benevolent purpose with new definitions. Mr. Bone also described changes to the accounting requirements that are intended to relieve the court system of the burden of maintaining the written accounts prepared by trustees. Instead of filing an accounting with the court, the draft would require the trustee to certify to the Attorney General that an accounting had been prepared and was available to the Attorney General upon request.

Ms. Wilson then described changes to IC 30-4-4-1 that exclude certain entities from the application of the trust code. The changes attempt to clarify that a charitable trust is covered by the trust code.

Rep. Mahern asked whether the Attorney General had been contacted concerning the draft. Ms. Preble replied the Attorney General's office had expressed concern about how much policing of charitable trusts would be expected.

Sen. Zakas asked whether the Secretary of State might be a more natural place to file the certifications. Rep. Mahern requested the staff to contact both the Secretary of State and the Attorney General regarding the filing.

Ms. Fruehwald concluded the discussion by stating to Ms. Wilson and Mr. Bone that they had given the statutes a good deal of clarity while simplifying the burdens.

PD 3073

Preliminary Draft 3073 provides that the finally determined federal estate tax value of a property interest is presumed to be the fair market value of the property interest for Indiana inheritance tax purposes. This change would enable Indiana residents to use the alternative valuation of farmland available under Section 2032A of the Internal Revenue Code.

Ms. Fruehwald remarked that it seems odd that a farm state like Indiana does not allow the Federal valuation under current law. Ms. Fruehwald and Ms. Bender then shared some of their personal experiences with Section 2032A valuations. Both felt that PD 3073 would greatly benefit Indiana family farmers.

Rep. Mahern asked about the fiscal impact of such a change. Ms. Preble estimated a total impact of between \$2,000,000 and \$5,000,000 that would result if PD 3073 and PD 3075 were passed by the General Assembly.

PD 3075

Preliminary Draft 3075 allows an inheritance tax deduction equal to the amount of the decedent's interest in a qualified family-owned business deducted from the decedent's gross estate for federal estate tax purposes under Section 2057 of the Internal Revenue Code.

Ms. Fruehwald noted that PD 3075 tracks federal law. Rep. Mahern asked whether the draft's cross reference to the federal law also pulled in the "claw back" rules found in the federal law. For example, the federal law requires the payment of the foregone estate taxes if the family gets out of the business prematurely. The members concluded that the draft did not pull in the "claw back" rules. Ms. Fruehwald posed the argument that in fact the "claw back" provisions would be expensive.

Mr. Reynolds addressed the issue on behalf of the Department of State Revenue. Mr. Reynolds felt that the circumstances that trigger a "claw back" under the federal law would come up very seldom and that the provisions would not be worth the added burden and expense.

The Commission and Mr. Reynolds then agreed that the deduction should be applied prospectively. The Commission requested Counsel to amend the draft accordingly.

PD 3068

Preliminary Draft 3068 provides the approved uses of the affidavit stating that no inheritance tax is due.

Mr. Martin noted that there is no guidance under current law for the use of the affidavit. Rep. Foley suggested that the title insurance industry would be delighted with the draft. The Commission then discussed the draft's impact on the title insurance industry.

Mr. Reynolds stated that under current law the affidavit is coming to have a variety of uses, but agreed that the guidance offered by PD 3068 would be helpful.

PD 3076

Preliminary Draft 3076 provides that a personal representative is not required to file with the court a copy of the inventory of the estate's assets prepared in the administration of the estate without court supervision.

The Commission discussed the draft and suggested that the language be amended to clarify that the court may not require the personal representative to file an inventory in the administration of an unsupervised estate.

Rep. Mahern adjourned the meeting at 12:20 pm.